IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8453 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 o : NO

JJJJ

whereby the respondent is ordered to be reinstated without backwages, is challenged under Articles 226 and 227 of the Constitution of India.

2. The respondent had approached the Labour Court with a case that he entered the services of the petitioner in May, 1989 as a Clerk in the Accounts Department on dailywage basis and according to him, he continued to serve upto 20th March, 1992, when his service was orally terminated. It was also alleged that his signature on certain writings were obtained on stamp papers with a view to see that the respondent would not become a permanent employee. The defence of the petitioner was that the respondent was employed under different and distinct orders appointing him for a specific period of 6 to 11 months and his services had come to an end in terms of such order of appointment. After appreciating the oral and documentary evidence led before it and elaborate discussion thereof, the Labour Court has reached to three distinct conclusions, namely (i) that the respondent was appointed under a contract; (ii) that on the petitioner's own evidence the respondent appeared to have worked on the dates which were not covered by any appointment order and (iii) that the respondent had put in continuous service from 22.5.1989 to 20.3.1992. It was further found that the work which the respondent was doing, was also continued and in fact the services of the respondent was required by the petitioner. In these facts, and further examining the conditions of service at the time of termination on the basis of the documents produced in this Court by the petitioner itself, it was found from the correspondence between the parties that as an employer the petitioner was in the practice of dictating terms and demanding an undertaking in advance before issuing an order of appointment for a fixed period. Even a conditional undertaking submitted by the respondent on 7.1.1992 was rejected and by an order dated 13.2.1992 an unconditional undertaking for issuance of a fresh order of appointment was demanded. The respondent appears to have submitted such an undertaking alongwith a letter dated 13.2.1992. During this period, while the respondent was in service, no appointment order under the conditions of which or on the expiry of which the respondent was liable to be discharged, was placed on record. The learned Counsel for the petitioner only relied upon the so-called last appointment effective from 1.9.1991, the term of which would have expried on 1.12.1997.

From the above discussion, it would be clear that the plea to brand the termination as an exception to

`retrenchment' by virtue of the provisions of Section 25(oo)(bb) of the ID Act was hollow and not substantiated by the material on record. In these facts and circumstances, even disregarding the earlier service of about 3 years, the respondent would have been entitled to reinstatement on account of the unfair treatment meted out to him by the petitioner Corporation. The respondent has not challenged the denial of backwages and therefore, impugned award ordering reinstatement without backwages is not required to be interfered in exercise of the extra-ordinary jurisdiction of this Court. The petition is therefore liable to be dismissed and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.•

(D.H.Waghela, J.)
*/Mohandas